

April 13, 2006

Ms. Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

RE: KeySpan Energy Delivery New England, D.T.E. 05-68

Dear Ms. Cottrell:

Enclosed please find the Attorney General's Initial Brief in the above matter.

Sincerely,

Colleen McConnell
Assistant Attorney General

enclosure

cc: Service List

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

KeySpan Energy Delivery New England

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D.T.E. 05-68

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document upon each person identified in the Notice of Filing and Public Hearing by the Secretary in this proceeding.

Dated at Boston this 13th day of April, 2006.

Colleen McConnell
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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

**KeySpan Energy Delivery New England
Petition for Approval of Long
Range Resource and
Requirement Plan**

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D.T.E. 05-68

**INITIAL BRIEF OF
THE ATTORNEY GENERAL**

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

By: Colleen McConnell
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April 13, 2006

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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INITIAL BRIEF OF THE ATTORNEY GENERAL

I. INTRODUCTION

KeySpan Energy Delivery New England (“KeySpan” or the “Company”) filed a Petition (“Petition”) asking the Department to approve its Long-Range Resources and Requirements Plan (the “Supply Plan”) in compliance with G.L. c. 164, § 69I.

II. PROCEDURAL HISTORY

On October 13, 2005, KeySpan filed its Supply Plan. On December 7, 2005, the Department conducted a public hearing and a procedural conference to establish a schedule for discovery, hearings and briefs. The Department held an evidentiary hearing on March 30, 2006. During the evidentiary hearing, KeySpan presented three witnesses to testify in support of its Supply Plan: Theodore Poe, Jr., Manager of Load Forecasting, Leo Silvestrini, Director of Sales and Load Forecasting and Elizabeth D. Arangio, Director of Gas Supply Planning.

III. THE COMPANY’S PROPOSAL

KeySpan claims meets its Supply Plan meets obligations to provide safe, reliable and least-cost gas service to its customers, and asks the Department to approve the Plan. Exh. KED-1, p. 1; *See* G.L. c. 164, §1. The Company claims that its gas-resource planning process has resulted in a reliable resource portfolio to meet the forecasted needs of its Massachusetts

customers. Exh. KED-1, p. 1. In its filing, the Company describes its forecast methodology, resource- planning process and resource portfolio evaluation. The Company also describes the resources it expects will be available during the forecast period, 2005-06 through 2009-10. *See* Exh. KED-1. These resources include transportation and underground storage contracts, Canadian gas supplies, and peaking resources. *Id.*, pp. 64-70.

IV. STANDARD OF REVIEW

The Department is required to ensure “a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost.” G.L. c. 164, § 69I. In accordance with this mandate, the Department reviews the long range forecast of each gas utility to ensure that the forecast accurately projects the gas sendout requirements of the utility’s market area. *Id.* A forecast must reflect accurate and complete historical data and reasonable statistical projection methods. *Id.* A forecast should provide a sound basis for resource planning decisions. *Colonial Gas Company*, D.P.U. 96-18, p. 4 (1996); *Bay State Gas Company*, D.P.U. 93-129, p. 5 (1996); *Holyoke Gas and Electric Department*, D.P.U. 93-191, p. 2 (1996); *Berkshire Gas Company*, 16 DOMSC 53, p. 56 (1987).

In reviewing a forecast, the Department determines if a projection method is reasonable based on whether the methodology is (a) reviewable (contains enough information to allow a full understanding of the forecast methodology); (b) appropriate (technically suitable to the size and nature of the particular gas company); and (c) reliable (provides a measure of confidence that the gas company’s assumptions, judgements and data will forecast what is most likely to occur). *KeySpan Energy Delivery New England*, D.T.E. 01-105, p. 2 (2003); *Colonial Gas Company*, D.P.U. 96-18, p. 5; *Bay State Gas Company*, D.P.U. 93-129, p. 5; *Holyoke Gas and Electric*

Department, D.P.U. 93-191, p. 2; *Haverill Gas Company*, 8 DOMSC 48, pp. 50-51 (1982). The Department specifically examines a gas company's (1) planning standards, including weather data; (2) forecast method, including forecast results; and (3) derivation and results of its design and normal sendout forecasts. See *KeySpan*, D.T.E. 01-105, p. 3; *Bay State Gas Company*, D.P.U. 93-129; *Boston Gas Company*, D.P.U. 94-109 (Phase I), p. 9 (1996). The Department also reviews the company's scenario analysis, which is used for evaluating the flexibility of the company's planning process, including any cold snap¹ analysis and sensitivity analysis. *KeySpan*, D.T.E. 01-105, p. 3; *Boston Gas Company*, 25 DOMSC 116, p. 200 (1992); *Bay State Gas Company*, D.P.U. 93-129, pp. 23-25; *Boston Gas Company*, D.P.U. 94-109 (Phase I), pp. 61-66.

V. ARGUMENT

The Department should order the Company to provide a Supply Plan that provides for a more open and transparent review of its decision-making procedures and planning analysis. Only then can the Department adequately determine whether the Supply Plan will provide the necessary resources for customers at the least cost. The Company's proposed Supply Plan does not meet the Department's review requirements because it does not: (1) adequately plan for deficiencies that may occur in the resource planning because of terminations of contracts or (2) provide sound analysis or evaluation of alternatives to contracts up for renewal during the

¹ A cold snap is a prolonged series of days at or near design conditions. *Colonial Gas Company*, D.P.U. 93-13, p. 66 (1995); *Boston Gas Company*, 25 DOMSC 116, p. 217 (1992); *Commonwealth Gas*, 17 DOMSC 71, p. 137 (1998).

forecast period.²

A. The Company Has Not Resolved Continuing Reliability Issues For Either Its Gas Supply or Its Distribution System.

1. Gas Supply

The Company's Supply Plan shows that the Company will have a deficiency under design conditions during the 2006/07 heating season. Exh. KED-1, Table G-22-D (Revised); Tr., pp. 22-23. According to the Company, the availability of the Tennessee Gas Pipeline expansion, referred to as the ConneXion project, will eliminate the deficiency. Tr., p. 23. The Department recently approved the Company's acquisition of the ConneXion capacity. *KeySpan Energy Delivery New England*, D.T.E. 05-35 (2006). If there is a delay in the in-service date of the ConneXion project, the Company's deficiency increases. Exh. KED-1, Table G-22-D (Revised), TGP Delay Case. Although the deficiency represents only approximately 1% of the Company's total design heating season requirements in 2006/07, this deficiency may affect a concentrated, local area of the Company's service territory—the actual impact on customers cannot be determined from the data presented. *Id.*, Table G-22-D (the calculation); Tr., p. 67.

Not only does the Company's design winter data show shortfalls, but the Company's proposed Plan also does not meet the design day planning standard. The Company provides a

² The Company has not provided sufficient information about its decision-making process for contracting for capacity or supplies necessary to serve customers. During the hearing, the Attorney General asked the Company's witness, Ms. Arangio, what analysis the Company performed and the alternatives the Company considered for a contract renewal whose term was to end the day following the date of the hearing. Tr., pp. 18-19. Ms. Arangio only responded vaguely. *Id.* It was only when the Department insisted on a direct answer that the witness revealed that there were no alternatives to renewing the contract and that the Company was negotiating the term of the agreement. Tr., pp. 19-20. Consistent with Department precedent, the Company should instruct their staff to answer questions directly and in a forthright manner. *See Fitchburg Gas and Electric Company*, D.T.E. 02-24/25 (2002).

table showing the projected design day requirements for each of the Company's service areas. Exh. KED-1, Chart IV-D-3. This chart illustrates that there will be a design day capacity deficiency in the Company's Cape Cod service area³ beginning in the first year of the forecast. *Id.* The deficiency grows throughout the forecast period, even with the additional Tennessee capacity from the ConneXion project. Exh. KED-1, p. 85. The Company hopes to obtain the needed capacity through entering into a long-term contract with Algonquin to eliminate the forecasted shortfall.

2. Distribution System Deficiencies

In addition to the capacity and commodity deficiencies under the planning standards for design conditions, the Company's filing describes the distribution system deficiencies related to low pressure. Low pressure on the Cape distribution system caused customer outages in East Dennis and Eastham, located in the middle and eastern ends of the Cape, during the extremely cold weather in 2004. Exh. KED-AG-1-15. The Company is currently seeking the approval of the Energy Facility Siting Board ("EFSB") for the installation of a new pipeline segment for the upcoming heating season to "alleviate low-pressure problems on the middle and eastern ends of the Cape."⁴ Exh. KED-1, p. 86. The Company also provides a list of 5 discrete "service needs" for the Cape included in the EFSB filing: pressure increases, increases to gas flow during peak periods, increased capacity and supply, and "system reinforcements to reduce reliance on the on-system peaking facilities maintained by KeySpan." *Id.*, pp. 86-87.

The Company anticipates that the ConneXion capacity will be available in 2007/08 and

³ The Cape Cod area is served solely by the Algonquin Gas Transmission system.

⁴ The Company's EFSB filing is docketed as EFSB 05-2.

that the ConneXion supplies will be delivered under an Algonquin capacity contract to customers on the Cape where there are critical distribution system problems. Exh. KED-1, pp. 76-77. That contract, however, has not yet been negotiated or executed, and the Company's plan is too vague. The Company should update and modify the plan before the Department approves it.

The Company has a responsibility to provide safe, secure, reliable and least cost service. The filing and approval of a resource plan should provide a significant measure of reassurance that the Company is fulfilling its responsibility. The Company's proposed plan raises many questions about the security and reliability of service, and the Department should not approve the Company's Plan because it does not provide concrete, least-cost solutions to these reliability issues.

_____B. The Company Did Not Procure Services From Its Affiliates Through an Open and Competitive Process.

The Company engages in a number of transactions related to the supply, transportation and storage of natural gas with affiliates. Exh KED-AG-1-8. The total cost to customers in 2005 for services provided by affiliates was over \$10 million with more than \$8 million of that amount paid to two affiliates wholly owned by KeySpan: KeySpan LNG, LLC and TransGas Inc. Exh. AG-RR-4 and AG-RR-6. Although the Department did not explicitly approve the contract with KeySpan LNG, LLC, it appears to be the continuation of a Federal Energy Regulatory Commission ("FERC") regulated agreement with Algonquin LNG, the predecessor to KeySpan LNG. The Department also did not approve the contract with TransGas Inc. for 2005, which refers to a Motor Freight Tariff.

The Company has provided no evidence that it procured the services from the affiliates

based on an open competitive process. The Department should require the Company to update the economic and other qualifications of both KeySpan LNG and TransGas, Inc. by providing the Department with the results of a recent request for proposal (“RFP”) to support the Company’s continued reliance on these closely held affiliates.

VI. CONCLUSION

For these reasons, the Department should reject the Company’s Petition and require that the Company file a plan that includes specific remedies to the resource deficiencies and file periodic updates regarding the progress made to secure adequate resources to serve its customers.

Respectfully submitted,

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